SBCivil Writ Petition No.1623/2006

M/s Samkit International & Ors.
vs.
State Bank of India & Anr.

Date of Order :: 4th April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mrs. Madhu Gupta, for the petitioners.
Mr. J.K.Chanda, for the respondents.

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The petitioners, borrowers, being failed to repay the bank dues were subjected to proceedings under Section 13(4) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the Act of 2002”) under the communication dated 1.3.2006.

The initiation of proceedings under Section 13(4) of the Act of 202 can well be challenged by a borrower by way of filing an appeal under Section 17 (1) of the said Act. In the instant matter the petitioners have approached this Court without exhausting the remedy available as referred above.

I do not find any reason in the present case to exercise the discretion vested with this Court under Article 226 of the Constitution of India at this stage without getting the petitioner exhausted the remedy available under the statute. The appropriate

course before the petitioners is to prefer an appeal under Section 17(1) of the Act of 2002 against measures sought to be initiated against them under Section 13(4) of the Act of 2002.

Accordingly this petition for writ is dismissed. However, if the petitioners prefer an appeal within 45 days from today, the same shall be entertained by the appellate authority i.e. the Debt Recovery Tribunal and shall be adjudicated on merits. The respondent Bank is restrained from proceeding further under the Act of 2002 against the petitioners for a period of two months from today as the allegation of the petitioners is that no notice under Section 13(2) of the Act of 2002 was served upon them by the Bank before resorting to the measures under Section 13(4) of the Act of 2002. It shall be open for the petitioners to seek interim directions by the tribunal thereafter.

(GOVIND MATHUR),J.

kkm/ps.